

been prolonged, and that the prisoner who has answered to the indictment was guilty of the neglect which entailed the acceleration of the death of the child.

In the view I take of the law and the facts it is quite plain Mrs. Beer did not undertake to administer medical or surgical assistance, nor did she undertake to do some lawful act, the doing of which would endanger life. No one can say that sitting silent by the bedside of a person suffering from sore throat would be dangerous to life. I therefore hold under all the circumstances in evidence here, that the section does not apply.

[The learned judge further said that it was equally clear that Mrs. Beer did not undertake to do any act, the doing of which, or the omission of which, might be dangerous to life, and consequently section 214 did not apply.]

As to the position of the parents, sections 209 and 210 being quoted, it is argued by the Crown that the father is criminally liable, and ought to be today indicted for not having supplied his child with a necessary of life, namely, medical aid, and in that connection *Queen v. Downes*, 1 Q.B.D. 15 is cited. Now the English statute, 31 & 32 Vict., ch. 122, sec. 7, provides that it is the duty of the parents to provide medical aid. It always was the law of England that the parent was bound to furnish necessities to his infant child, and he was criminally responsible if he neglected that duty, if he was able to get the necessary provisions. Some of the most eminent judges in England were called upon to determine the application of the new statute of the case brought before them, but they doubted, whether under the law as it was before the passing of that Act, medical aid was a necessary. Now you will observe our statute left it where the common law left it. So it would be a question whether, under our law, the father would be liable to an indictment for not providing medical aid. One might think that the simple well known remedies that almost every father and mother knows of, and which a parent might procure without the intervention of a doctor, would be considered necessary and fill the requirements of the law. I have said how the highest authorities in England have hesitated to find medical aid to be included in the word "necessary." So there is very great doubt whether the father in this case is liable under our statute to be indicted for a breach of the law.

The application on the part of the Crown is to hold the father liable, and that the prisoner is liable as accessory to the father's offence, as having counselled or procured the neglect from which the Crown says the child died, or owing to which the death of the child was accelerated. But there is no evidence of counselling or procurement. The only part of this section that could by any possibility apply to the prisoner, is the sub-section about aiding and abetting. But here, what is charged is not the commission of an offence in the common acceptance of the term, but it consists in not doing something. If the offence consisted in doing some overt act, there might be aiding and abetting in the commission of that overt act, but how one can aid or abet a person in not doing something I have not been able to fathom.

It is laid down as a general principle there can be no accessory before the fact in manslaughter, because manslaughter necessarily implies absence of malice, absence of premeditation, and that therefore there can be no accessory before the fact. I do not subscribe entirely to the general principle, because I think sometimes there may be an accessory before the fact.

I direct that the prisoner be set at liberty, the Crown being allowed to reserve a case upon the evidence presented.